IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9545 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHELAJI AMRAJI CHAUHAN, SARPANCH OF VARVADIA GROUP

Versus

COLLECTOR

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Appearance:

MS KUSUM M SHAH for Petitioner

MR IM PANDYA AGP for Respondent No. 1

MR MH RATHOD for Respondent No. 3 to 51

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. In the present petition, notice has been issued by this Court on 2nd December 1999 and the matter is pending at admission stage. The petitioner has challenged the order passed by the Collector, Palanpur

dated 18th March 1999 and the order passed by the Additional Chief Secretary [Appeals], Revenue Department, dated 14th October 1999.

2. The Collector has granted the land bearing survey No. 68, situated at village Islampura, Taluka Vadgam, admeasuring 1 acre 0 guntha for the grave yard in response to the demand made by the villagers vide letter dated 6th February 1999. The Collector has considered the proposal from the Deputy Collector, Palanpur in respect of the personal visit of the land in question, and also considered the opinion of the District Health Officer, and thereafter, under the provisions of the Gujarat Land Revenue Code, the Collector has passed the order allotting the above lands for the purpose of grave yard and the administration of the same was required to be carried out by the Gram Panchayat, and no person or community have got any right or interest upon the said land granted by the Collector. Further, the land in question is specified for the purpose of grave yard only.

3. The above order of the Collector was challenged by the petitioner before the Additional Chief Secretary [Appeals], Revenue Department, under the provisions of section 211 of the Gujarat Land Revenue Code. The revisional authority has considered all the relevant records of the lower authority, as also the submissions made by the petitioner, and thereafter, passed the order dated 14th October 1999 and confirmed the order of the Collector dated 18th March 1999.

4. Shri R.H.Parmar, Mamlatdar of Vadgam Taluka has filed an affidavit in reply in this petition on 5th February 2000, contending that the disputed land for building grave yard was not registered in the panchayat record. A copy of the 7/12 extract shows that the disputed land is a gauchar land. The District Health Officer, Palanpur had opined that the said land was allotted for grave yard and he has also issued a `No Due Certificate' in this matter. That out of the disputed land being survey No. 68 total admeasures 3 acres 27 gunthas paiki, the land admeasuring 10 gunthas have been allotted for the purpose of grave yard. It is further contended that the said land has been allotted by the Collector, Banaskantha u/s 38 of the Bombay Land Revenue Code. The Collector has also obtained the opinion from the District Health Officer and other concerned officers. They have also given No Due Certificate in this matter. Thus, according to the Mamlatdar, the authority has passed the legal and proper order, in accordance with law, and therefore, prayed that the present petition may

be dismissed. Alongwith the said report, the extract of 7/12 and the opinion of the Chief District Health Officer, Palanpur and the map of the land in question has been produced on record.

4. Ms. Kusum Shah, learned counsel for the petitioner has submitted that initially, the Mamlatdar, Vadgam has rejected the demand of the land in question, on the ground that this land has been utilized by the Village Panchayat for the purpose of a pond vide letter dated 30th December 1995. In the same way, this request has also been rejected by the Deputy Collector, Palanpur vide letter dated 26th November 1996 on the ground that the land in question is adjacent to the lands of the gamtal, and therefore, it is not in the interest of the Panchayat to reserve the said land for grave yard. Similarly, on 25th March 1997, the Deputy Collector, Palanpur has also rejected the request for the land in question for reserving the same for grave yard. In the said letter, in respect of the survey No.68, the Deputy Collector has observed that, this very land is covered as pond and therefore, the same cannot be granted as per the demand made by the persons. Similarly, the Collector, Banaskantha has also rejected the very same request by order dated 31st August 1998 on the ground that the land in question is a gamtal land and it is near the primary school and also near the fields, and there was a different opinion from the Chief District Health Officer, and therefore, considering all these aspects, the Collector, Banaskantha has rightly rejected the request by the order dated 31st August 1998. Ms. Shah has further submitted that the Gram Panchayat has passed a resolution No.23 wherein it has been specifically requested the Panchayat to utilize the pond situated on survey No.68, which has been granted by the M.L.A. Vadgam in favour of the respondents. The said resolution was passed on 25th August 1998. Therefore, Miss Shah has submitted that, when earlier Mamlatdar, Deputy Collector and Collector have rejected the request for the land which was required to be reserved for the purpose of grave yard, but thereafter, all of a sudden, considering the opinion of the Deputy Collector dated 6/2/1999, the Collector, Banaskantha has passed the order dated 18/3/1999, which has been confirmed by the revisional authority. Ms. Shah has also submitted that this land belongs to the Panchayat, but while exercising the powers u/s 110 of the Gujarat Panchayat Act, 1961, the same had been taken over by the State Government and therefore, the Panchayat has passed the resolution for use of the disputed land as the pond. Therefore, according to Ms. Shah, the order passed by the Collector, Banaskantha, and

the revisional authority are illegal and the same are required to be quashed and set aside.

5. I have heard the learned counsel Mr. M.H.Rathod for the respondents and Mr. Pandya, learned AGP for the respondent authority. I have also perused the impugned orders passed by the Collector, Banaskantha as well as the revisional authority.

6. It is pertinent to note that the District Collector, Banaskantha has considered the relevant proposal received from the Deputy Collector, Palanpur dated 6th February 1999, and also considered the personal visit made by the Deputy Collector, Palanpur in respect of the land in question and has also considered the opinion of the District Health Officer. It is also necessary to note that the total land of survey No. 68 covers 3 acres and 27 gunthas, out of which, only 10 gunthas of land is being utilized for grave yard and the rest of the land can be utilized for pond. This aspect has been considered by the Collector and accordingly, the order has been passed by the Collector u/s 38 of the Bombay Land Revenue Code. The land which has been specified for the purpose of grave yard by the Collector has been given back to the Panchayat for utilizing the same for that purpose, wherein it has been made clear that no person or community is entitled to create any sort of right or interest over the lands in question, which have been reserved for grave yard and that the said land is to be utilized only for the purpose of grave yard and not for any other purpose.

7. The revisional authority has further considered the difficulty of the village people as there is no grave yard in the village and one grave yard is in respect of Sunni Jamat at survey No.113, but it is a private property, and therefore, considering this fact, the revisional authority has confirmed the order of the Collector after appreciating all the facts on record. The revisional authority has also given the reasons in support of his conclusion. The revisional authority has also pointed out the two facts, namely, that in the Islampura village, there were some conflicts between the villagers as regards the demand of grave yard and therefore, having regard to the dispute between the villagers as regards to the grave yard on survey No.68, and taking into account the fact the land for the grave yard situated on the private property was permitted, but there had been some objection by the persons who are having the private property, and therefore, ultimately, the grave yard of Badalgadh has been utilized by the

villagers of Islampura and because of the dispute and conflicts between Siya and Sunni communities, the villagers of Islampura are unable to utilize the grave yard. Therefore, as and when any demand is raised by any Muslim community for the purpose of grave yard, the particular other Muslim community has objected to such a request or demand having been made by the other Muslim community and therefore, in order to resolve this dispute permanently amongst the two Muslim communities of Islampura village, on the basis of the report submitted by the District Health Officer, Mamlatdar as well as the Deputy Collector, the revisional authority has upheld the order of the Collector, dated 18th March 1999. The revisional authority has further observed in the above order that, there is no other land available for the people of the village, and taking into consideration the fact that though the land is situated in the pond, out of which, some portion of the land can be utilized for the purpose of grave yard, and taking due care and caution that the water in the pond may not be spoiled, and therefore, I am in complete agreement with the reasonings adopted by the revisional authority and the conclusion reached by him in the impugned order, which requires no interference by this Court while exercising the powers under Article 226 and 227 of the Constitution.

7. In view of the aforesaid discussions, I find no merits in the present petition, and the same is therefore dismissed with no orders as to costs.

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